

## **JUDGE ANITA B. BRODY**

Judge Brody was born in Brooklyn, New York in 1935. She received her A.B. from Wellesley College in 1955 and her J.D. from Columbia Law School in 1958. She served as a Deputy Assistant Attorney General in New York, then took time out to raise her children. She was in private practice from 1973 to 1981, and was a Lecturer in Law at the University of Pennsylvania Law School from 1979 to 1980. From 1981 to 1992 Judge Brody served as a judge on the Court of Common Pleas, Montgomery County. On October 20, 1992 she was appointed to the United States District Court by President George Bush.

### **PRELIMINARY GENERAL MATTERS**

#### **1. Correspondence with the Court**

Judge Brody permits correspondence from counsel on procedural matters concerning scheduling and case-management. At times she may treat correspondence as a motion; at other times she may require that counsel file a formal motion.

#### **2. Communications with Law Clerks**

Judge Brody permits counsel to speak with her law clerks about administrative or scheduling matters.

#### **3. Telephone Conferences**

Conferences concerning disputes about scheduling changes, extensions of time, or other routine issues are conducted by telephone. Judge Brody will often arrange for a telephone conference to deal with discovery disputes, but the issues must be relatively straight forward. No more than 3 or 4 attorneys can be involved.

#### **4. Chambers Copies of Submissions**

\_\_\_\_ Judge Brody expects counsel to send two courtesy hard copies of all submissions (including copies of the complaint and answer) to her chambers. Also, submissions such as points for charge or

voir dire must be submitted by a disk.

## CIVIL CASES

### Pretrial Procedure

#### 1. Pretrial Conferences

\_\_\_\_\_ Judge Brody notices an initial pretrial scheduling conference as soon as counsel for all parties have entered appearances. A copy of the standard notice is attached. The notice establishes certain guidelines that Judge Brody will follow throughout the litigation and outlines the matters that will be considered at the scheduling conference. The Judge expects counsel to attend the conference in person. After the scheduling conference, Judge Brody issues a scheduling order which outlines the time frame governing each stage of the litigation. A copy of the standard scheduling order is also attached. Judge Brody will arrange for other pretrial conferences if the need arises, and holds a final pretrial conference before trial.

#### 2. Scheduling Policy

Judge Brody tries to accommodate counsel with regard to scheduling. If counsel agree on a scheduling issue, a letter requesting Judge Brody's approval is sufficient. If time does not permit a letter, an attorney may fax the request to the law clerk. .

#### 2. Continuances and Extensions

Judge Brody is generally accommodating with respect to

initial requests for extensions; she is less accommodating with respect to subsequent requests. Although Judge Brody adheres to the general policy that no associate should be forced to "pull an all-nighter" to comply with a scheduling deadline, once the dates are established, reasonable compliance is expected. It is unlikely that Judge Brody will grant a continuance once a case has been called for trial.

### **General Motion Practices**

#### **1. Chambers Copies of Motion Papers**

\_\_\_\_\_ Counsel should send two courtesy copies of motion papers to her chambers.

#### **2. Reply and Surreply Briefs**

In dispositive motions, Judge Brody encourages submission of a reply brief, in non-dispositive motions reply briefs will be accepted with permission of the Judge. Surreply briefs are discouraged and will be accepted only with consent of the Judge. Requests should be addressed to the law clerk assigned to the case.

#### **3. Motions for Summary Judgment**

The brief accompanying a motion for summary judgment and the responding brief must identify the material facts which are not in dispute, preferably in outline form, with specific citations to the underlying record.

#### **4. Motions for Pro Hac Vice Admission**

Motions for admission for pro hac vice should be filed with

the court.

#### **5. Oral Arguments and Evidentiary Hearings**

Judge Brody will hold oral argument if she believes it will assist her in deciding the motion. Counsel may request to be heard on a motion and this request will be considered. The law clerk in conjunction with the Judge's calendar deputy handle scheduling for motions for judgment and hearings. Argument should be as brief as possible. Counsel should assume a 20 minute limit unless arrangements are made through the law clerk for a longer time.

### **Discovery Matters**

#### **1. Length of Discovery Period**

\_\_\_\_ Except in complex cases, Judge Brody will allow 90 to 120 days for discovery. She will grant additional time if necessary.

#### **2. Discovery Conferences and Dispute Resolution**

Judge Brody expects the parties to resolve discovery disputes on their own. If they cannot, she will usually hold a telephone conference, often on the record, to resolve the matter.

#### **3. Confidentiality Agreements**

Parties are free to reach a confidentiality agreement among themselves. If the parties request that the court enter the agreement as an order it must include a proviso clearly indicating that Judge Brody is not bound by the terms and may alter them sua sponte.

#### **4. Expert Witnesses**

Judge Brody expects counsel to arrange by themselves for the

exchange of written expert reports and will permit counsel to depose experts when appropriate. Judge Brody expects that counsel will identify expert witnesses well in advance of trial. Judge Brody may not reschedule a trial because of the unavailability of an expert and expects that the parties will videotape the deposition of an expert who will be unavailable at trial.

#### **Settlement**

Whether requested to or not, Judge Brody will inquire as to settlement at every opportunity. Judge Brody will refer the case to the magistrate judge for a formal settlement conference immediately upon the close of discovery and before the pretrial submissions are due.

#### **Arbitration**

Judge Brody does not hold pretrial scheduling conferences in arbitration cases. She expects that discovery will be completed before the arbitration date. If a trial de novo is demanded, Judge Brody will hold a pretrial conference to explore settlement and will schedule the trial as soon as possible.

#### **Pretrial Requirements**

Unless otherwise specified, Judge Brody requires the parties to submit short pretrial memoranda pursuant to Local Rule 21(c). In conjunction with the pretrial memoranda, Judge Brody requires the submission of voir dire questions, proposed jury instructions, proposed verdict sheets, and motions in limine. In

non-jury cases, she requires submission of proposed findings of fact and conclusions of law.

In preparation for a final pretrial conference, Judge Brody expects counsel to communicate with each other on a number of matters, including objections to exhibits, expert depositions, and stipulations of fact.

### **Injunctions**

#### **1. Scheduling and Expedited Discovery**

When a temporary restraining order is requested, Judge Brody will immediately schedule a conference as soon as possible to decide the TRO. She requires all counsel to be present unless the urgency of the circumstances precludes notice to opposing counsel. Judge Brody rarely grants ex parte temporary restraining orders.

Judge Brody schedules preliminary and permanent injunction hearings as soon as possible and combines the two hearings if feasible. Usually, she permits expedited discovery for injunctive matters.

#### **2. Proposed Findings of Fact and Conclusions of Law**

\_\_\_\_ Judge Brody requires the immediate submission of findings of fact and conclusions of law in injunction cases, in accordance with Fed R. Civ. P. 52(a).

### **Scheduling of Trials**

#### **1. Entering the Trial Pool**

Generally, Judge Brody places cases in a trial pool, as opposed to assigning a specific trial date. A case is placed in the trial pool 30 days after the close of discovery or if dispositive motions are filed, after the motions have been resolved. Trials are rarely specially listed. Counsel must be prepared to begin trial upon 48 hours notice and should remain in contact with Judge Brody's calendar deputy for this purpose. Historically, Judge Brody's trial pool has been very short.

## **2. Scheduling Conflicts**

Judge Brody prefers that counsel notify her by letter concerning professional and personal scheduling conflicts affecting the trial schedule. If necessary, counsel may contact Judge Brody's calendar deputy by telephone and confirm in writing.

## **3. Cases Involving Out-of-Town Parties or Witnesses**

Judge Brody does not generally change her trial schedule for the convenience of out-of-town parties or witnesses; however, she will consider special requests if brought to her attention before the case enters the trial pool.

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### **Trial Procedure**

#### **1. Trial Briefs**

Judge Brody requires the submission of trial briefs. However, upon request of counsel, Judge Brody may forego this requirement.

#### **2. Voir Dire**

Judge Brody requires the submission of proposed voir dire questions prior to trial not to exceed 15 questions. In civil cases, Judge Brody permits counsel to conduct the voir dire. Initial questioning is limited to the questions that were submitted.

### **3. Side Bars**

Judge Brody permits side bar conferences during trial on issues that could not be anticipated or resolved prior to trial.

### **4. Motions In Limine**

If counsel wishes to request rulings in advance of trial, he or she should file a motion in limine together with a memorandum of law. Motions in limine will be addressed at the final pre-trial conference. Judge Brody may defer ruling on motions in limine until trial.

### **5. Examination of Witnesses Out of Sequence**

Judge Brody makes every effort to accommodate counsel regarding the scheduling of witnesses. Depending upon the circumstances, Judge Brody may permit counsel to take the testimony of a witness out of turn.

### **6. Note-taking by Jurors**

Judge Brody decides whether note-taking will be permitted on a case by case basis. .

### **7. Opening Statements and Summations**

Generally, Judge Brody will not impose time limits on opening statements or summations and does not require use of the



lectern. Judge Brody expects counsel to refrain from objecting during summations. If an objection is necessary, it should be stated softly and, unless egregious, will be ruled upon at the conclusion of the summation. Judge Brody may cure the objectionable statement in her charge.

#### **8. Offers of Proof**

All offers of proof as to the testimony of witnesses or the admissibility of documents must be covered at the final pretrial conference. If other evidentiary issues arise and an offer of proof is necessary, counsel will usually be called to sidebar.

#### **9. Use of Multiple Attorneys During Trial**

The parties may utilize several different attorneys during the trial to examine witnesses and argue legal points; however, the parties may not use more than one attorney to examine a particular witness or argue a specific legal point.

#### **10. Examination of Witnesses Beyond Redirect and Recross**

\_\_\_\_ Upon request, Judge Brody may permit further examination of a witness after redirect or recross has been completed.

#### **11. Disputes over Videotaped Testimony**

Objections to videotaped testimony, should be submitted before the final pre-trial conference with a transcript of the testimony.

12. Judge Brody requires that exhibits be marked and exchanged prior to trial. Two courtesy copies of all trial exhibits should be submitted to the Judge at the pre-trial

conference. If the exhibits are voluminous or difficult to reproduce, counsel should bring this to the court's attention before trial. Counsel must also provide the court with three copies of an exhibit list.

13. **Reading of Material into the Record**

Judge Brody has no overall practice or policy on reading stipulations, pleadings, or discovery materials into the record.

14. **Offering Exhibits into Evidence**

Judge Brody has no overall policy regarding the offering of exhibits into evidence. Unless otherwise necessary, counsel may wait until the close of his or her case to move for their admission.

15. **Directed Verdict Motions**

Counsel may move for a directed verdict either orally or in writing. Judge Brody usually conducts oral argument on such a motion.

16. **Jury Instructions and Verdict Sheets**

Counsel are required to submit proposed jury instructions (one point per page) and a proposed verdict sheets in advance of trial. This must be accompanied by a disk. Normally, Judge Brody will distribute a copy of her proposed charge early in the trial, give counsel an opportunity to review and critique it, and then conduct a conference to review the proposed charge. If a new issue arises, Judge Brody will permit submission of supplemental jury instructions up until the close of evidence. Before

closing arguments, it is Judge Brody's usual practice to distribute to all counsel a written copy of the final version of the charge.

**17. Proposed Findings of Fact and Conclusions of Law**

In non-jury cases, Judge Brody requires submission of proposed findings of fact and conclusions of law in advance of trial. After trial, counsel may amend or augment the submissions in light of what occurred at trial, but must include citations to the notes of testimony.

**Jury Deliberations**

**1. Written Jury Instructions**

Judge Brody does not normally give the jury a copy of her instructions; however, if requested by counsel, she will consider doing so.

**2. Exhibits in the Jury Room**

Counsel are instructed to confer on which exhibits should go out with the jury. Judge Brody will rule upon any dispute.

**3. Handling of Jury Requests to  
Read Back Testimony or Replay Tapes**

Judge Brody will evaluate jury requests to play back portions of recorded or videotaped testimony on a case by case basis.

**4. Availability of Counsel During Jury Deliberations**

\_\_\_\_ Judge Brody permits counsel to leave the courthouse during deliberations but expects them to be available by telephone and

within easy reach of the courthouse.

5. **Taking the Verdict and Special Interrogatories**

The courtroom deputy usually takes the verdict. In most cases, Judge Brody will submit special interrogatories to the jury.

6. **Polling the Jury**

If requested Judge Brody will permit polling of the jury.

7. **Interviewing the Jurors**

After the verdict has been recorded and the jury discharged, Judge Brody permits counsel to speak with those jurors who choose to speak with them. Judge Brody advises the jurors that they are permitted to speak with counsel, but instructs them that it is their personal choice and that they are not required to do so.

**CRIMINAL CASES**

1. **Approach to Oral Argument on Motions**

Judge Brody will grant oral argument if she believes it will assist her in deciding the motion.

2. **Pretrial Conferences**

Judge Brody usually holds a pretrial conference.

3. **Voir Dire**

Judge Brody conducts the entire voir dire but receives proposed questions.

4. **Other Practices and Procedures**

Judge Brody issues the attached standard pretrial order.

5. **Sentencing Memoranda**

Judge Brody expects the submission of sentencing memoranda by both the government and the defendant well in advance of the sentencing.

## OTHER GENERAL MATTERS

### Appellate Briefs

Judge Brody appreciates receiving copies of the appellate brief when a decision she renders is appealed.